It would seem perfectly clear that if a legislature directed a convention to submit its work to the people for ratification, the convention would be bound to obedience. The consent of the legislature is necessary in order that a convention may be lawfully held, and this consent may be given conditionally. The terms of the legislative "call," therefore, are binding on the convention. (*Wells* v. *Bain*, 75 Pa. St. 39.) This view is bitterly attacked *obiter*, in *Sproule* v. *Fredericks*, 69 Miss. 898; but the position of the court appears to be untenable. When a legislature, on the other hand, expressly dispenses with submission to a popular vote, it would seem equally clear that the convention had the right to declare its constitution in force. In the third and most difficult case, when the legislature is silent as to the submission of the convention's work to the people, the duty and the power of the convention seem to be at variance. No one should question that, in subservience to the best interests of the people, the convention ought to submit its constitution to a popular vote; otherwise, as is pointed out in Jameson on Constitutional Conventions (4th ed., §§ 410, 411), the people are at the mercy of a despotic single chamber. Nevertheless, the late South Carolina convention and the Mississippi convention of 1890 (6 HARVARD LAW REVIEW, 56, 57) afford but two examples of a course of action frequently pursued in constitutional conventions prior to 1865. Therefore, where the legislative call is silent as to the necessity of submitting a constitution to confirmation or rejection by a popular vote, it is now too late, in view of historical precedent, to deny the power of a convention to put its constitution in force without submitting it to the people.

CONTRADICTION OF DYING DECLARATIONS. — A note in the Recent Cases last month (9 HARVARD LAW REVIEW, 432) expressed a doubt as to the soundness of admitting previous statements of the deceased in contradiction of his dying declarations. The New York Law Journal, in its issues of January 31 and February 3, criticises this note as "unconvincing and inconclusive," and argues strongly for the admission of the statements. A word of explanation may not be out of place here. These notes on recent cases are not intended to be either convincing or conclusive; their purpose is to call attention to interesting decisions, and to point out possible objections, if any appear. They are suggestive rather than dogmatic. In the second place, the position taken in the note is worthy of consideration. The argument of the court and of the Journal is directed, in fact, against the weight of dying declarations as evidence, and in this point of view is forcible. But the logical result from this would seem to be to exclude the evidence, or to call the attention of the jury to its weakness. It may be questioned whether, because an unsatisfactory piece of evidence has been admitted, other unsatisfactory evidence should therefore be allowed to impeach it. The objection is not more technical than other matters of evidence, but is based on the general rule excluding hearsay except in special cases. The argument in favor of the evidence based on the loss of cross-examination proves too much, for it would apply to all cases of hearsay. That based on the peculiar nature of dying declarations is stronger, and perhaps should prevail. Evidence against the credibility of the declarant is in general admissible, and as a question of practice the decision may be a wise one. Nevertheless, the considerations here set down seem to make it a doubtful case. *People* v. *Lawrence*, 21 Cal. 658, mentioned by the

court, is directly in point, and agrees with the principal case, *State* v. *Lodge*, 33 Atl. Rep. 312 (Del.).

MARRIED WOMEN — DAMAGES FOR IMPAIRED CAPACITY TO LABOR. — Though the enfranchisement of woman from her common law bondage has been wellnigh completed by modern statutes, yet the process has gone on so intermittently that the courts are often called upon to fill up the intervals, and, by judicious interpretation of statutes, to systematize and complete the whole work. A recent decision of this sort by the Massachusetts court has not only attracted wide attention among the profession, but has been given public prominence in the columns of the daily press. *Harmon* v. *Old Colony R. R. Co.*, 42 N. E. Rep. 505, is an authority for the principle that, in an action of tort brought by a married woman for personal injuries, her impaired capacity to labor may be considered in estimating damages. This decision seems a necessary consequence of the statutes which give a married woman the right to her earnings, and allow her to sue for them in her own name; and the result reached is by no means unprecedented, even in Massachusetts. *Jordan* v. *R. R. Co.*, 138 Mass. 425; *Smith* v. *R. R. Co.*, 23 S. W. Rep. 784 (Mo.); *Brooks* v. *Schwerin*, 54 N. Y. 343; *Fleming* v. *Town of Shenandoah*, 67 Iowa, 505.

All is not perfectly plain sailing, however; for it must be remembered that the husband, notwithstanding modern statutes, still has his action for the loss of his wife's services; and in order that there may not be a double recovery, their respective rights must be carefully distinguished. If the wife has recovered damages in one action for the loss to her attendant upon her impaired capacity to labor, the husband must not be allowed to recover in a later action for a loss which was not his, and for which satisfaction has already been given. However difficult it may be to divide the loss accurately, there can be little doubt on principle as to where the line should be drawn. So far as the injury to the wife disables her from performing household duties, the loss is the husband's and he alone can recover; so far as she is disabled from earning money in an outside employment, the damage is hers. This distinction has been clearly pointed out in many cases. See *Brooks* v. *Schwerin*, *supra*.

It would seem to follow that if the wife is engaged in no outside occupation, but confines herself to household duties, she should recover no damages of this nature. And it is so held. "The test of her right to damages for loss of time is whether she was in the employment of persons other than her husband, on her own account." *Fleming* v. *Town of Shenandoah*, *supra*. See also *R. R. Co.* v. *McGinnis*, 46 Kan. 199; *Filer* v. *R. R. Co.*, 49 N. Y. 47; *Thomas* v. *Town of Brooklyn*, 58 Iowa, 438. Yet even in cases where she is not at the time engaged in a separate employment it may be open to question whether the impairment of her earning power, in the abstract, should not be considered by the jury. Conversely, it has been held that, if the husband would recover for the loss of his wife's services, he must show that such a relation existed between them that he was entitled to those services. *R. R. Co.* v. *Dickey*, 41 Pac. Rep. 1070 (Kan.). The border line between household duties and outside labor is reached when the wife is employed in her husband's business establishment. In such cases, when she receives no wages, the services are assimilated to those rendered in the house-